

REMARKS

This is a response to the office action mailed July 15, 2010. In the office action the Examiner:

- Rejected Claims 1 and 4-6 under 35 USC 102(e) as being anticipated by, or in the alternative, under 35 USC 103(a) as obvious over Albal et al (US Pat. 6,700,962, hereinafter “Albal”) in view of Dobbins et al (US Pat. 6,711,171, hereinafter “Dobbins”) and/or Belser et al (US Pat. 6,449,279, hereinafter “Belser”);
- Rejected Claim 2 under 35 U.S.C.103 (a) as being unpatentable over Albal in view of Wieczorek (EP 1 271 911);
- Rejected Claim 8 under 35 U.S.C.103 (a) as being unpatentable over Albal in view of Parsons et al (US Pub 2002/0085701); and
- Rejected Claims 9-13 and 19 under 35 U.S.C.103 (a) as being unpatentable over Albal in view of Guibourge (US Pub 2004/0119755).

Amendments to Claims

Claim 1 has been amended. Support is provided at least in paragraphs [0050] to [0052] and Fig. 2 of the application as published.

Claims 3, 5, 7, 10, 11 and 19 have been amended to place the claims in better form in view of the amendments to claim 1.

Claim 8 has also been amended. Support is provided at least in paragraph [0018] of the application as published.

Claims 9 and 18 have also been amended. Support is provided at least in paragraph [0056] of the application as published.

All dependant claims have been amended to change the first word “A” to “The.”

No new matter has been added.

Interview Summary

Applicant and Applicant's representatives Craig Opperman and Linda Lee thank Examiner P. Nguyen for his comments during a telephonic interview on January 5, 2011. In the interview, the Examiner agreed that the amendments proposed by the Applicant's representatives would overcome the cited reference, Albal. In particular, the Examiner agreed that amending claim 1 to specify that:

- (a) the telephony service location is remote from both the caller and the intended call recipient; and
- (b) the telephony service receives two different requests/signals.
 - (i) the first is a request from a caller for establishing a connection with a call recipient
 - (ii) the second is a command signal.

The Examiner agreed that receiving a command signal during a call connect process, the call connect process including a call dial phase, a call set-up phase, a logical association phase, and a call connect phase, would overcome the current rejections. The Examiner also indicated the amended claims would be subject to an additional search.

The Examiner also suggested reinstating the provision "wherein the command signal is received from a communication device of either the caller or call recipient."

The claims have been amended accordingly.

ARGUMENTS

In the Office Action, claims 1 and 4-6 are rejected under 35 USC 102(e) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over Albal in view of Dobbins and/or Belser. In making this 102 rejection, the Examiner appears to be suggesting that Albal's missing explicit teachings are inherent based on "official notice" through a reference to his own personal work experience.

As shown, below, however, Albal cannot be relied on as a 102(e) reference because Albal does not, explicitly or inherently, teach all the elements of independent claim 1. Even if Albal is

combined with Dobbins and/or Belser, the combination does not teach all these elements of amended claim 1.

Rejection under 35 USC 102(e)

It is well established that a patent application's "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." MPEP § 2131, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Similarly, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

The Albal reference, whether in combination with "Official Notice," Dobbins and/or Belser does not teach the claimed invention.

Specifically, amended claim 1 recites, in part:

A method of operating a telephony service on a telephony network, the method comprising:

- at a telephony service location remote from a caller and a call recipient:

- receiving, from the caller, a request for establishing a connection to the call recipient, the request having been initiated by the caller dialing a number associated with the call recipient;

- receiving a command signal during a call connect process,

- the call connect process including at least one of a group consisting of a call dial phase, a call set-up phase, a logical association phase, and a call connect phase...

Thus the claim requires (a) a telephony service location remote from both the caller and the intended call recipient; and (b) two different requests/signals being received by the telephony service. The first is a request from a caller for establishing a connection with a call recipient. The second is a command signal.

This command signal is received during a call connect process, which includes a call dial phase, a call set-up phase, a logical association phase, and a call connect phase.

For a number of reasons, each set out below, the Albal reference fails to teach at least the elements of amended claim 1 above.

Albal does not teach Telephony Service Location Remote from Caller and Call Recipient

As shown above, claim 1 requires three entities: (i) a caller who requests a call connection to (ii) a call recipient and (iii) a telephony service location remote from the caller and call recipient.

In contrast, Albal teaches only two entities: (i) a communication device and (ii) a communication node, for accessing telephony services. (*See*, col. 4, lines 54-64 and col. 6, lines 33-44) More specifically, referring to Fig. 1, the Albal reference only teaches a communication connection between a user 20 (or 32) and communication node 16. (*See*, col. 1, lines 61-67) Thus, there is no teaching in Albal describing the claimed three entity configuration.

As discussed with the Examiner, the Office Action inaccurately states that a communication connection is established between the users 20 and 32 via communication node 16:

Fig. 1 showing the communication connection between users 20 and 32 via devices 12 and 22 through the networks 14 and 18 with node 16. (*See*, Office Action, p. 2)

This is an incorrect characterization of the art. Nowhere does Albal teach that a communication connection is established between the users 20 and 32 through the node 16. Albal merely states, and Fig. 1 shows, that one or more devices have access to the communication system 10, but Albal is only concerned with the connection by the one or more users to the communication node 16. (*See*, col. 1, lines 61-67) Indeed, this is recognized in the office action:

The communication devices 12, 22 of the communication system 10 can be utilized by end users 20, 32 to access and/or connect with the communication node 16. (*See*, Office Action, p. 2)

Therefore, Albal fails to teach the three-entity configuration required in claim 1.

Albal does not teach the two different requests/signals with their specific timing and functions

As stated above, the claim requires **two different** requests/signals being received by the telephony service. The first is a request from a caller for establishing a connection with a call recipient. The second is a command signal.

Claim 1 further specifies the relative timing and functions of receiving the command signal as follows, “receiving a command signal during a call connect process.” In other words, a command signal (to initiate a telephony service) is received **during** the call connect process, and **not after** a connection has been established.

In contrast, Albal only teaches a communication between a user 20, 32 and the communication node 16. Moreover, it is only once a connection has been established between the user 20 (or 32) and the communication node 16 that the user can request services from the communication node 16. (*See*, col. 5, lines 1-16; *see also*, col. 4, lines 54-64 and col. 6, lines 33-44)

Note too, that Claim 1, also requires “a request for establishing a connection” to the call recipient, not a request to connect with the service providing node as taught by Albal

Nowhere does the Albal reference teach or suggest both “a request for establishing a connection” by a caller to a call recipient and receiving a command signal “during a call connect process.” Thus, Albal fails to teach these additional elements of claim 1.

Albal does not teach a Call Connect Phase let alone receiving a command signal DURING the call connect phase

Furthermore, claim 1 specifically requires that a command signal is received “during a call connect phase” where the call connect phase includes “at least one of a group consisting of a call dial phase, a call set-up phase, a logical association phase, and a call connect phase.” Nowhere does Albal teach any details of the call connect phase as claimed.

Also as pointed out above, Albal only teaches receiving input signals once a connection has been established between a communication device and the communication node. (*See*, col. 4, lines 54-64 and col. 6, lines 33-44) Only when a connection is established may the end user at the communication device perform a variety of tasks or transactions. (*See*, col. 5, lines 1-16) Albal, therefore, does not teach receiving a command signal “during a call connect phase” because the connection to the command node must first be established.

Thus, it is not possible for Albal to teach receiving the signal during the call connect phase and/or teach the specific characteristics of the call connect process, i.e., including “at least one of a group consisting of a call dial phase, a call set-up phase, a logical association phase, and a call connect phase.” Therefore, for at least these reasons, Albal cannot be relied on as a 102(e) reference against amended claim 1.

Rejection under 35 USC 103(a)

The Examiner seems to acknowledge that “Albal does not explicitly teach “wherein the call process includes at least a call set-up phase, a logical association phase, and a call connect phase.” Accordingly, the Examiner appears to rely on official notice (the Examiner’s personal knowledge) and or other references. This approach also fails to provide the claim elements not found in Albal.

“Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).” (*See*, MPEP section 2144.03(A))

In addition to the 102(e) rejection described above, the Examiner rejects claims 1 and 4-6 under 35 USC 103(a) by what appears to be taking official notice by relying on the “Examiner’s personal knowledge acquired while employed at Lucent Technologies, to recognize that a call

process at least includes “a call set-up phase, a logical association phase, and a call connect phase.” The Examiner then concludes:

Therefore examiner holds that it is obvious to the ordinary artisan at the time of the invention was made to clearly define that the at least three phases of set-up (or originating), connect (or send), and logical association must be present and that is a functional element of design. (*See*, Office Action, p. 5)

Applicant submits that this does not meet the requirements of Official Notice as set out by the MPEP. But, even if it did, this “official notice” stills falls short.

Claim 1 recites more than merely the phases of a call connect process. It specifically requires “receiving a command signal during a call connect process.” The Examiner’s “official notice” does not mention this element (“receiving a command signal during a call connect process.”), nor do any of the other cited references teach “receiving a command signal during a call connect process.” Merely defining the phases of the call connect process is not sufficient to support the teachings of the full claim element in question. The Examiner is respectfully requested to withdraw his rejection under 103(a).

Accordingly, Albal does not teach all the elements of amended claim 1 and, therefore, is allowable over the cited references. Claims that depend from an allowable independent claim are allowable at least for the same reasons. Therefore, claims 1-19 are patentable over Albal or in combination with one or more of the additionally cited references.

CONCLUSION

In light of the above amendments and remarks, the Applicant respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney at (650) 352-0524, if a telephone call could help resolve any remaining items.

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Respectfully submitted

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